

Exhibit C

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☐ No hearing is set
☒ Hearing is set:
Date: 2/21/13
Judge: Tabor

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THURSTON
SUPERIOR COURT

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN THE COUNTY OF THURSTON

JZK, INC., a Washington corporation,
including RAMTHA'S SCHOOL OF
ENLIGHTENMENT ("RSE"), a division
thereof,

Plaintiff,

vs.

VIRGINIA COVERDALE,

Defendant.

Case No.: 12-2-02241-8

RESPONSE TO PLAINTIFF'S MOTION FOR
ORDER TO SHOW CAUSE

I. RELIEF REQUESTED

COMES NOW Defendant Virginia Coverdale, by and through her attorney of record, Breckan C.L. Scott, Attorney & Counselor of Law, PLLC, and requests that this Court deny Plaintiff's Motion for Order to Show Cause because Ms. Coverdale could not intentionally violate any order which 1) does not specifically state the provision which is alleged to have been violated, and 2) a person cannot intentionally violate an order when it is impossible for them to comply.

II. RESPONSE

STATEMENT OF FACTS

On 11/14/13, the Court Ordered Ms. Coverdale to "preserve" \$1500.00. At the time, Ms. Coverdale did not have that full amount, so preserved the amount that was left (she testified to this fact at her post proceeding deposition on Friday, February 14, 2014) until "further order of the Court," pursuant to the Order

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1 After a subsequent Order was entered, she reasonably believed that, by the explicit
2 terms, the Order no longer required that any of those funds be preserved.

3 On 11/22/13, the Court ruled that Ms. Coverdale violated the 10/23/13 Order and the
4 Writ by selling the vehicle. As a sanction for the contempt, the Court ordered her to pay
5 \$3,000.00 into the registry of the Court by December 20, 2013, but did not decide the
6 disposition of those funds, nor did it specifically inquire as to whether Ms. Coverdale had the
7 ability to pay those funds. The Court also Ordered that Ms. Coverdale could purge the
8 contempt, and avoid paying the sanction, if she rescinded the transaction thus putting the
9 vehicle back under the Court's jurisdiction. On the evening of 11/22/13 (or within a day or
10 two thereof), Ms. Coverdale's counsel spoke with Mr. O'Sullivan, who indicated that he was
11 not interested in returning the vehicle. Ms. Coverdale has no legal method of compelling the
12 transaction to be rescinded. She did not, does not, and at no relevant time had the \$3,000.00 to
13 pay into the court registry.

14 Contempt of court is intentional disobedience of any lawful order of the court. RCW
15 7.21.010(1)(b); *King v. Dep't of Soc & Health Servs.*, 110 Wash.2d 793, 797, 756 P.2d 1303
16 (1988). The power to censure contemptuous behavior flows from both statute and the inherent
17 power of the courts. *In re Marriage of Nielsen*, 38 Wash.App. 586, 588, 687 P.2d 877 (1984).
18 Contempt may be criminal or civil. *King*, 110 Wash.2d at 799, 756 P.2d 1303. The primary
19 purpose of the civil contempt power is to coerce a party to comply with an order or judgment.
20 *Id.* A trial court may impose a contempt sanction using its inherent constitutional authority or
21 under statutory provisions found in Title 7 RCW. *A.K.*, 162 Wash.2d at 645, 652, 174 P.3d 11.

22 Generally, there are two types of contempt civil and criminal. *Berty*, 136 Wash.App. at
23 84, 147 P.3d 1004 Washington's contempt statutes define contemptuous conduct but they do
24 not distinguish between civil and criminal contempt. *State v Hobble*, 126 Wash 2d 283, 292,
25 892 P 2d 85 (1995). Instead, the statutes distinguish between punitive and remedial sanctions

1 for contempt. RCW 7.21.010, .030, .040; *In re Marriage of Didler*, 134 Wash.App. 490, 500,
2 140 P.3d 607 (2006), *review denied*, 160 Wash.2d 1012, 161 P.3d 1026 (2007).

3 A “punitive sanction” is “a sanction imposed to punish a past contempt of court for the
4 purpose of upholding the authority of the court.” RCW 7.21.010(2). A “remedial sanction” is
5 “a sanction imposed for the purpose of coercing performance when the contempt consists of
6 the omission or refusal to perform an act that is yet in the person’s power to perform.” RCW
7 7.21.010(3). A “remedial sanction” is also required as a sanction and is imposed for the
8 purpose of coercing performance when the contempt consists of the omission or refusal to
9 perform an act that is yet in the person’s power to perform.

10 **1. There was no intentional violation of the orders.**

11 Contempt actions are governed by RCW 7.21, et. seq., “Contempt of Court.”
12 “Contempt of Court” means *intentional*: “disobedience of any lawful judgment, decree, or
13 process of the court.” RCW 7.21.010(1)(b). Punitive sanction means “a sanction imposed to
14 punish a past contempt of court for the purpose of upholding the authority of the court.” RCW
15 7.21.010(2). Remedial sanction means “a sanction imposed for the purpose of coercing
16 performance when the contempt consists of the omission or refusal to perform an act that is yet
17 within the person’s power to perform.” RCW 7.21.010(3).

18 The Court Ordered Ms. Coverdale to either purge the contempt by getting the vehicle
19 back into the Court’s jurisdiction by rescinding the sale, or pay \$3,000.00 to the Court registry
20 by December 20, 2013 as a sanction for selling the vehicle, which the Court found was in
21 violation of Court Orders. There is no evidence that she has the legal authority to force the
22 vehicle to be returned, and Mr. O’Sullivan has apparently decided to hire an attorney and
23 appear rather than return the vehicle. At no relevant times did Ms. Coverdale have the funds to
24 comply with the Orders - so cannot have intentionally violated, as is the standard for a finding
25 of contempt.

1
2 **2. JZK, Inc.'s Motion and Request for a finding of Intentional Violation is simply an**
3 **illegitimate "end-run" around properly bringing a fraudulent transfer claim, and**
4 **could act to prejudice Mr. O'Sullivan if binding on JZK, Inc.'s separate motion noted**
5 **for next Friday.**

6 The "sanction" for the "intentional" violation of the Court's Order regarding appraisals
7 provided a purge clause if Coverdale returned the vehicle to the Court. Of note, the
8 Washington Supreme Court recently granted Ms. Coverdale's Motion to Consolidate her
9 appeal of that contempt order with the underlying case.

10 Putting aside the argument, also asserted on appeal, that Ms. Coverdale never had the
11 legal authority to rescind the transaction, a judicial ruling with the potential to bind a non-
12 present party who is involved in concurrent proceedings on this issue would cause some
13 significant questions regarding due process, notice, etc. Further, it would allow Plaintiff to
14 avoid the provisions of the Uniform Fraudulent Transfers Act entirely – having already had a
15 binding decision without giving opportunity for a necessary person notice or opportunity to be
16 heard.

17 **3. Additional support is found in rule that ambiguity must be construed in favor of Ms.**
18 **Coverdale**

19 In determining whether the facts support a finding of contempt, "we strictly construe
20 the order alleged to have been violated, and the facts must constitute a plain violation of the
21 order." *In re Marriage of Humphreys*, 79 Wn.App. 596, 599, 903 P.2d 1012 (1995). Further,
22 "If the finding is based upon the violation of an order, the order must be strictly construed in
23 favor of the contemnor." *Id.*

24 The severity in construction required for an order of contempt was demonstrated as
25 recently as 2012 when Division 2 overturned a trial court's finding of contempt where the
Order provided that a company was to "install" a certain system, but did not specifically state
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1 that it was to operate that system. *State Dept. of Ecology v. Tiger Oil Corp.*, 271 P. 3d 331,
2 166 Wn. App. 720 (2012)(“...although the...decree required [Defendant] to install the
3 [system], “strictly construed” in favor of [Defendant], the...decree did not clearly [require its
4 operation]).

5 When the allegations made by JZK, Inc. are compared to the basis in the Orders
6 claimed to have been intentionally violated, a careful reading of the language indicates that
7 clearly contempt is inappropriate.

8 **III. Conclusion**

9 Ms. Coverdale was unable, either because she did not have the funds or she had no
10 legal authority, to comply with the Orders cited by JZK, Inc. Further, there simply cannot be
11 an intentional violation of a Court Order when the basis for the contempt was not plain on the
12 face of the Orders, or within the power of the person subject to the Order. A finding of
13 contempt requires a severely restricted reading of the Order upon which the contempt is based,
14 such that all ambiguities are construed in favor of the contemnor and only an intentional
15 violation that is plainly clear from the facts can be chargeable as contempt. This Court should
16 also recognize and deny what is an attempt to obtain an unfair advantage in its fraudulent
17 transfer claims by requesting a “sanction” that establishes the claim for them – without notice
18 to all necessary parties.

19 For all of the aforementioned reasons, Defendant respectfully requests that this Court
20 deny Plaintiff’s Motion. If Ms. Coverdale is found in contempt, we request a judicial finding
21 of finality of any resulting order, such that a prompt consolidation with the appeal can be
22 completed.

DATED this 19th day of February, 2014.

24 BRECKAN C.L.SCOTT, ATTORNEY & COUNSELOR OF LAW, PLLC

25 /s/ Breckan Scott

By: Breckan C. Scott, WSBA No. 41585
Attorney for Defendant Coverdale

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